

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

THE TRUSTEES OF PURDUE \*  
UNIVERSITY \* June 28, 2022  
\*  
VS. \*  
\* CIVIL ACTION NO. W-21-CV-727  
STMICROELECTRONICS N.V. \*  
ET AL \*

BEFORE THE HONORABLE ALAN D ALBRIGHT  
DISCOVERY HEARING (via Zoom)

APPEARANCES:

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10:38 1 (Hearing begins.)

02:01 2 DEPUTY CLERK: A civil action in Case  
02:01 3 6:21-CV-727, The Trustees of Purdue University versus  
02:01 4 STMicroelectronics NV. Case called for a discovery  
02:01 5 hearing.

02:01 6 THE COURT: Mr. Shore, if you'd like to  
02:01 7 make announcements for counsel.

02:01 8 MR. SHORE: Yes, Your Honor. Michael  
02:01 9 Shore for Purdue Research Foundation and Purdue  
02:01 10 University. With me are Raphael Chabaneix and Chris  
02:02 11 Hsu in my office. And I believe joining us on the Zoom  
02:02 12 will be two client representatives, Kenneth Waite who  
02:02 13 is also the declarant in the declaration that was  
02:02 14 provided to the Court, and Brooke Biere, B-i-e-r-e.

02:02 15 THE COURT: Welcome to them. Welcome to  
02:02 16 you.

02:02 17 Mr. Cohen?

02:02 18 MR. COHEN: Thank you, Your Honor. Good  
02:02 19 afternoon. Justin Cohen from Holland & Knight on  
02:02 20 behalf of STMicroelectronics, Inc. With me today is  
02:02 21 Bruce Sostek and Dina McKenney, also of Holland &  
02:02 22 Knight. Max Ciccarelli of the Ciccarelli Law Firm, and  
02:02 23 also our client representative, Andrew Mayo of --  
02:02 24 in-house counsel for STMicroelectronics, Inc., Your  
02:02 25 Honor.

02:02 1 THE COURT: Welcome to Mr. Mayo and  
02:02 2 everyone else.

02:02 3 And I'm happy to take up these issues.

02:02 4 MR. COHEN: Well, thank you, Your Honor,  
02:02 5 and thank you for making time so quickly today. We  
02:02 6 really appreciate it.

02:02 7 THE COURT: Well, just remember when  
02:02 8 you're doing your Yelp reviews...

02:02 9 (Laughter.)

02:02 10 THE COURT: Give me five stars. You  
02:02 11 never know how long they're going to keep me here so I  
02:02 12 want to keep my score up.

02:03 13 MR. COHEN: Google, Yelp, Better Homes.  
02:03 14 I mean, you got all the reviews from us, Your Honor.

02:03 15 THE COURT: Okay.

02:03 16 MR. COHEN: So starting -- what we're  
02:03 17 seeking is a motion to compel on a number of  
02:03 18 interrogatories, Your Honor.

02:03 19 Starting with Interrogatory No. 1 which  
02:03 20 is the Court's standard form interrogatory asking  
02:03 21 essentially to identify individuals with relevant  
02:03 22 knowledge. It's straight out of Local Rule  
02:03 23 CV 33(b)(1). Purdue objected, although they're not  
02:03 24 allowed to object.

02:03 25 We have a number of issues we've asked

02:03 1 for them to supplement. They supplemented once, but  
02:03 2 unfortunately their response is still deficient in that  
02:03 3 no one from Purdue University, the named plaintiff, is  
02:03 4 identified. None of the licensees of these  
02:03 5 patents-in-suit are identified. And none of the  
02:03 6 individuals who negotiated the licenses on behalf of  
02:03 7 Purdue and Purdue Research Foundation are identified.

02:03 8 So what we're concerned of, Your Honor,  
02:03 9 is that we're going to get sandbagged at trial when  
02:04 10 Purdue wants to call witnesses that were never  
02:04 11 identified in their initial disclosures. So what we're  
02:04 12 asking for is an order to compel them to provide us  
02:04 13 their final list within a week, and for the Court to  
02:04 14 enter an order that states that they will not be  
02:04 15 entitled to call anyone at trial who's not on their  
02:04 16 list, absent a showing of good cause.

02:04 17 And, Your Honor, you might recall,  
02:04 18 actually Ms. McKinney and I had a case in front of you  
02:04 19 about a year ago this issue came up. And it was  
02:04 20 actually this precise issue at pretrial. Judge Manske  
02:04 21 had entered a similar order. And it was right before  
02:04 22 trial the defendant in that case had tried to call  
02:04 23 witnesses that were never disclosed on their initial  
02:04 24 disclosures or in response to Interrogatory No. 1.

02:04 25 So we're asking for a similar order, Your

02:04 1 Honor.

02:04 2 THE COURT: Mr. Shore?

02:04 3 MR. SHORE: First of all, Your Honor,  
02:04 4 what he told you about what was disclosed is not true.  
02:04 5 We not only disclosed -- we disclosed every single  
02:05 6 license agreement that applies to these patents. So  
02:05 7 all the signatories on those license agreements are  
02:05 8 sitting right there in front of them. They have the  
02:05 9 signatories, they have their names. So to the extent  
02:05 10 that there are any licenses at all, they have been  
02:05 11 produced.

02:05 12 And the signatories on the licenses are  
02:05 13 there. The contact information on the licenses is  
02:05 14 there. The notice provisions on who you notify under  
02:05 15 the license are there. So they have all that  
02:05 16 information as far as licensees.

02:05 17 As far as people from Purdue, another  
02:05 18 misstatement. The inventors are listed. The inventors  
02:05 19 were employees of Purdue. They are the only employees  
02:05 20 of Purdue who have any knowledge of anything related to  
02:05 21 this, because they are the inventors of the patents.  
02:05 22 These patents go back several years. So there is  
02:05 23 nobody else to identify.

02:05 24 As far as the -- I think the other thing  
02:05 25 he brought up was they asked in their -- they want

02:05 1 anybody involved in government research grants. Our  
02:06 2 declaration from Mr. Waite indicates that that is  
02:06 3 thousands of people, none of which -- and by the way,  
02:06 4 we only -- our record retention policy, which we also  
02:06 5 gave them -- only -- we only keep records for five  
02:06 6 years. Now, we have a record hold now, so obviously  
02:06 7 nothing else is being destroyed.

02:06 8 But when you ask for everybody related to  
02:06 9 the research projects, these are DARPA research  
02:06 10 projects funded by the federal government that go on  
02:06 11 for a decade, that means every Ph.D. student that came  
02:06 12 through. We'd have to go figure out what Ph.D.  
02:06 13 students were there. Have to go figure out anybody who  
02:06 14 touched any of this research, anybody who ever entered  
02:06 15 the lab.

02:06 16 It is crazily overly broad, unduly  
02:06 17 burdensome, not reasonably calculated to lead to  
02:06 18 discovery of admissible evidence. We've identified the  
02:06 19 inventors.

02:06 20 As far as the negotiators of the license,  
02:06 21 the only knowledge we have -- there's no one at Purdue  
02:06 22 right now that we're aware of who negotiated any  
02:07 23 licenses for these patents. And to the extent there is  
02:07 24 anybody at Purdue, it would only be the people who are  
02:07 25 listed on the license agreements or on the notice of

02:07 1 the license agreements. So we fully responded to this  
02:07 2 interrogatory.

02:07 3 We also refer the response to  
02:07 4 Interrogatory No. 3 where there's several more people  
02:07 5 listed in response to that interrogatory. And  
02:07 6 obviously we are not going to call anybody at trial who  
02:07 7 we do not identify in pretrial disclosures or in  
02:07 8 pretrial interrogatory responses or whatever is  
02:07 9 required. I know better. I've been doing this for  
02:07 10 30 years.

02:07 11 But to the extent that we discover any  
02:07 12 additional people, to the extent that we can find any  
02:07 13 other people who might be remotely relevant, we'll do  
02:07 14 that. But we think them asking as they have in  
02:07 15 their -- in the chart that they sent the Court, for us  
02:07 16 to go back and try to figure out over 20 years anybody  
02:07 17 who ever entered a lab, anybody who ever did research,  
02:08 18 any Ph.D. student, anybody who ever touched anything  
02:08 19 related to silicon carbide is grossly overbroad.

02:08 20 And the affidavit, actually, from -- or  
02:08 21 the declaration from Mr. Waite outlines that our client  
02:08 22 has already spent hundreds of hours responding to the  
02:08 23 discovery. And we think that what -- the burden that  
02:08 24 we've gone to and the effort we've gone to is more than  
02:08 25 sufficient.

02:08 1 THE COURT: A response?

02:08 2 MR. COHEN: Briefly, Your Honor.

02:08 3 Just Interrogatory No. 1, again, is the  
02:08 4 Court's standard form. Mr. Waite, who is the  
02:08 5 declarant, who's the chief patent counsel at PRF, is  
02:08 6 not on Purdue's initial disclosures or stated in a  
02:08 7 response to Interrogatory No. 1.

02:08 8 If Purdue is -- you know, Purdue is  
02:08 9 essentially putting us on a little bit of a fishing  
02:08 10 expedition to go find all the relevant people, when all  
02:08 11 we're asking for is for them to respond to  
02:08 12 Interrogatory No. 1, the Court's standard form, and  
02:08 13 identify folks. And then agree not to call anyone that  
02:08 14 they don't specifically identify.

02:09 15 THE COURT: Mr. Shore, if I could ask  
02:09 16 you, it seems to me that it would be in your best  
02:09 17 interest to go through and make sure that you -- as of  
02:09 18 June 28th, you had identified everyone in a formal  
02:09 19 document that you thought was relevant to make sure  
02:09 20 that you have a stake in the ground and there wouldn't  
02:09 21 be an argument about whether or not you had disclosed  
02:09 22 them. I'm not sure what the pushback is here.

02:09 23 Now, if it's over-breadth, like they want  
02:09 24 everyone whoever touched anything, I'm not asking you  
02:09 25 to do that either. What I'm really trying to do is



02:09 1 find out from you why you would not want to protect  
02:09 2 yourself by saying, here you go, ST, here's everyone  
02:09 3 that we think is relevant at this point. And we go  
02:09 4 from there. I'm not sure what the problem with that  
02:10 5 is.

02:10 6 MR. SHORE: There's not a problem and  
02:10 7 we've done that.

02:10 8 And, by the way, when he brings up the  
02:10 9 chief patent counsel's not named, he's only been there  
02:10 10 two years. So he wasn't there for the negotiation of  
02:10 11 any of those old --

02:10 12 THE COURT: So let me -- I'm sorry to  
02:10 13 interrupt you. So that gentleman is someone you're not  
02:10 14 planning to call?

02:10 15 MR. SHORE: No. We're not planning to  
02:10 16 call him. And if that changes, we'll supplement way  
02:10 17 before the close of fact discovery so they can take his  
02:10 18 deposition or do whatever they want to do.

02:10 19 This is a motion to compel of something  
02:10 20 that is completely unnecessary. And, again, I realize  
02:10 21 that before the close of fact discovery and before --  
02:10 22 and in addition, they have time to depose anybody they  
02:10 23 need to depose. We have to list whoever we're going to  
02:10 24 call at trial or we can't call them at trial. Of  
02:10 25 course. Absolutely of course.

02:10 1 But this is the first time they've  
02:10 2 limited this to who you want to call at trial,  
02:10 3 et cetera. If you look at their position, they're  
02:10 4 asking us for every single person who worked, who was  
02:10 5 involved in the government research grants that funded  
02:11 6 the research leading to these patents. That is  
02:11 7 thousands of people.

02:11 8 THE COURT: Mr. Shore, when does  
02:11 9 discovery end in this case?

02:11 10 MR. SHORE: November.

02:11 11 THE COURT: Okay. Give me just one  
02:11 12 second. I'll be right back.

02:11 13 (Pause in proceedings.)

02:11 14 THE COURT: Here's what I'm going to do,  
02:11 15 primarily because I've dealt with counsel on both sides  
02:11 16 of this case for at least 20 years. I'm going to set a  
02:11 17 deadline of the end of July for both sides to identify  
02:12 18 everyone they reasonably anticipate has relevant  
02:12 19 knowledge in this case. So the other side has an  
02:12 20 opportunity to take their deposition or do discovery.

02:12 21 And if someone needs to be added after  
02:12 22 that point, you can -- after that date, you can discuss  
02:12 23 it with each other and decide whether or not that's  
02:12 24 okay with the opposing counsel. If it isn't, you can  
02:12 25 come in and show good cause why they should be added.

02:12 1 But I would obviously recommend you do that as soon as  
02:12 2 you're aware they need to be added and not wait until  
02:12 3 the pretrial conference.

02:12 4 So what is the next issue up?

02:12 5 MR. COHEN: Thank you, Your Honor.

02:12 6 We're seeking an order compelling Purdue  
02:12 7 to respond fully to Interrogatory No. 3.

02:12 8 And Interrogatory No. 3 asks Purdue to  
02:12 9 provide a narrative answer about the role that the  
02:12 10 Purdue Research Foundation, that's a nonparty, has with  
02:12 11 respect to the claimed inventions and these asserted  
02:12 12 patents.

02:13 13 Now, Purdue's response, Your Honor, is  
02:13 14 that PRF is a nonprofit foundation that, among other  
02:13 15 things, manages intellectual property owned by the  
02:13 16 plaintiff. And from there Purdue relies on Rule 33(d)  
02:13 17 to identify several license agreements for the  
02:13 18 patents-in-suit and other patents.

02:13 19 The issue, Your Honor, is that Mr. Shore  
02:13 20 has represented to the Court and to us that PRF has a  
02:13 21 much more substantial role than what is currently being  
02:13 22 disclosed in response to Interrogatory No. 3.

02:13 23 And if I might share my screen and just  
02:13 24 share with you two quotes, Your Honor, from an earlier  
02:13 25 hearing to explain why we believe we need a more

02:13 1 fulsome narrative answer.

02:13 2           So this is from a hearing earlier this  
02:13 3 year, Your Honor, where Mr. Shore represented that the  
02:13 4 Purdue Research Foundation maintains the patent  
02:13 5 portfolio, supervises licensing activities, supervises  
02:14 6 any litigation activities. And all this is done as an  
02:14 7 arm of the university.

02:14 8           Now, Mr. Shore also said -- and I'm going  
02:14 9 to share this next -- make sure I can share the next  
02:14 10 one here -- that the key thing here is we have the  
02:14 11 Purdue Research Foundation which is running this  
02:14 12 litigation, they're controlling the litigation.

02:14 13           So the issue we have here, Your Honor, is  
02:14 14 that PRF is not a party to the litigation. But the  
02:14 15 only individuals identified are from the PRF, Purdue  
02:14 16 Research Foundation.

02:14 17           It's clear that they have a substantial  
02:14 18 role and have had a substantial role. They were in  
02:14 19 charge of prosecuting the patent applications, securing  
02:14 20 the funding for the DARPA research licensing  
02:14 21 activities, and owned the patents up until just before  
02:14 22 Purdue filed suit when the patents were transferred to  
02:14 23 the university. And the university filed suit in its  
02:14 24 own name.

02:14 25           We think the jury's entitled to a

02:14 1 narrative answer or an explanation more than just a  
02:15 2 superfluous kind of statement in Rule 33(d). In  
02:15 3 particular, we don't think Rule 33(d) is appropriate.

02:15 4 Mr. Shore is -- Purdue is clearly able to  
02:15 5 provide a rather simplistic narrative answer about the  
02:15 6 Purdue Research Foundation's role. And we believe  
02:15 7 we're entitled to that answer.

02:15 8 MR. SHORE: I'm sorry.

02:15 9 THE COURT: Please, Mr. Shore.

02:15 10 MR. SHORE: We actually referred them to  
02:15 11 the website which explains exactly what the Purdue  
02:15 12 Research Foundation does. It's actually -- we have  
02:15 13 referred them to the website that says it's  
02:15 14 prf.org/about it tells the story of what the Purdue  
02:15 15 Research Foundation does and why it does it.

02:15 16 We also did not just say Rule 33. We  
02:15 17 gave them references to specific Bates numbers that  
02:15 18 also explained the role of PRF. It's not -- it's not  
02:15 19 unduly burdensome for them to simply go read the  
02:16 20 material.

02:16 21 There's also a statute that creates PRF  
02:16 22 or some sort of a regulation. We've referred them to  
02:16 23 that. I mean, I have no idea -- I guess what they're  
02:16 24 saying is they don't want us to use Rule 33(d) even  
02:16 25 though we gave them specific Bates numbers. We gave

02:16 1 them a website that explains exactly what the Purdue  
02:16 2 Research Foundation does.

02:16 3 And the other kind of strange thing about  
02:16 4 this is, you know, there's nothing else to tell them.  
02:16 5 I mean, I could, I guess, print out the website for  
02:16 6 them and cut and paste it into the -- into the answer.  
02:16 7 But, I mean, again, this is -- they got every single  
02:16 8 thing they asked for and more. And there's nothing  
02:16 9 else that we can add.

02:16 10 And by the way, they can take the  
02:16 11 deposition of Kenneth Waite, or they can take the  
02:16 12 deposition of Brooke Biere and they can expound upon it  
02:16 13 and ask questions, but, you know, it's not up to us to  
02:16 14 go and in interrogatory response to basically try to,  
02:17 15 you know, figure out what deposition questions they  
02:17 16 might ask and go ahead and do this.

02:17 17 They have more than enough to prepare to  
02:17 18 take any deposition they want. They have more than  
02:17 19 enough to understand what the Purdue Research  
02:17 20 Foundation does. So I don't even understand why this  
02:17 21 is an issue.

02:17 22 THE COURT: Mr. Cohen?

02:17 23 MR. COHEN: Briefly, Your Honor.

02:17 24 The interrogatory doesn't ask broadly for  
02:17 25 everything that the Purdue Research Foundation does

02:17 1 generally. It asks specifically for PRF's role with  
02:17 2 respect to the patents-in-suit, and for the history of  
02:17 3 the inventions and the patents-in-suit.

02:17 4 Mr. Shore, you know, has represented that  
02:17 5 PRF is running this litigation, has been responsible  
02:17 6 for licensing the patents-in-suit, we believe is  
02:17 7 currently responsible for licensing the  
02:17 8 patents-in-suit.

02:17 9 And before we take a deposition of PRF,  
02:17 10 we believe we're entitled to what is essentially a  
02:17 11 brief narrative answer explaining their role with  
02:17 12 respect to the patents-in-suit so that we can be  
02:17 13 prepared for that deposition.

02:17 14 And the documents that are cited are  
02:18 15 more -- typically more general, except for a few of the  
02:18 16 license agreements for the patents-in-suit themselves.

02:18 17 MR. SHORE: Let me jump in there real  
02:18 18 quick, Your Honor.

02:18 19 One of the questions is the preparation  
02:18 20 and prosecution of the applications leading to the  
02:18 21 patent. That's all privileged, and that's all on our  
02:18 22 privilege log. We also gave them a 28-page  
02:18 23 single-spaced privilege log that lists all the  
02:18 24 communications on it related to the prosecution of the  
02:18 25 patent, all the communications.

02:18 1 So every single thing that the Purdue  
02:18 2 Research Foundation does related to prosecuting the  
02:18 3 applications that lead to the patent, it's all  
02:18 4 privileged and it's all been logged. So there's  
02:18 5 nothing else we can give them.

02:18 6 And as far as -- I think the other thing  
02:18 7 they asked for is PRF's role in regarding obtaining  
02:18 8 funding for research. That's 20 years ago. There are  
02:18 9 no documents. There's no one at Purdue who still works  
02:18 10 there who had anything to do with this DARPA research  
02:18 11 grant.

02:18 12 They've got everything we have. We don't  
02:18 13 have any more to give them. There is nothing else we  
02:19 14 can give them.

02:19 15 And if they can't prepare for a  
02:19 16 deposition based upon the disclosures that they have,  
02:19 17 which, by the way, is about specifically identified 100  
02:19 18 or more documents that specifically, by Bates number,  
02:19 19 are identified, then I can't help them. I mean, I  
02:19 20 could take a deposition on this blindfolded.

02:19 21 THE COURT: Mr. Cohen, anything else?

02:19 22 MR. COHEN: Just briefly, Your Honor.

02:19 23 Again, we're not asking for some  
02:19 24 in-depth, you know, dissertation about what PRF does  
02:19 25 globally. We're just asking for a narrative answer



02:19 1 about their role with these specific patents.

02:19 2 It's not privileged to say that PRF was  
02:19 3 responsible for patent prosecution. It's not  
02:19 4 burdensome to say they were responsible for obtaining  
02:19 5 the funding. We just believe we're entitled to that  
02:19 6 narrative answer.

02:19 7 MR. SHORE: But they're not responsible  
02:19 8 for obtaining the funding. I mean, it's just --

02:19 9 THE COURT: Okay. Thank you.

02:19 10 (Pause in proceedings.)

02:20 11 THE COURT: At this point I'm just -- I'm  
02:20 12 going to take Mr. Shore at his word and ST can take  
02:20 13 initial depositions, corporate representative, or whatever.

02:20 14 If for some reason ST's counsel finds  
02:20 15 that that is inadequate and that they need more  
02:20 16 information from Mr. Shore, and between discussions of  
02:20 17 counsel you guys can't work out the production of  
02:20 18 additional information that Mr. Shore thinks is  
02:20 19 appropriate, just come back to me after the deposition  
02:21 20 and we'll go from there.

02:21 21 Mr. Cohen, what's next?

02:21 22 MR. COHEN: Interrogatories No. 4 and 5  
02:21 23 go to marking, Your Honor. And specifically  
02:21 24 Interrogatory No. 4 asks the plaintiff to identify any  
02:21 25 product that has been made according to these patents.

02:21 1 Now, we understand there are license  
02:21 2 agreements that were contemplated commercializing the  
02:21 3 claimed technology. In addition, we believe that there  
02:21 4 were prototypes made in Dr. Cooper's research lab.

02:21 5 And we believe that Purdue has an  
02:21 6 obligation to identify those, or to take a position  
02:21 7 that no products have ever been made according to the  
02:21 8 asserted claims of the patents-in-suit.

02:21 9 But the answer right now, Your Honor,  
02:21 10 simply states that plaintiff, the Purdue research -- or  
02:21 11 Purdue University, does not currently contend that  
02:21 12 Purdue makes, uses, sells or offers to sell any  
02:21 13 products made using the asserted patents.

02:21 14 But that's not really the question,  
02:21 15 again, Your Honor. We just need Purdue to take a  
02:21 16 position. Have there been products made according to  
02:22 17 these patents or not? And to state that.

02:22 18 MR. SHORE: Your Honor, I feel like I'm  
02:22 19 playing Whack-A-Mole. This is the first time I've ever  
02:22 20 heard in all of our discussions that they are looking  
02:22 21 for prototypes that were made in a laboratory 20 years  
02:22 22 ago. Never heard that.

02:22 23 It's not in their chart. They've never  
02:22 24 said that to me. They never e-mailed that to me. This  
02:22 25 is the first time I've ever been asked for it. So I

02:22 1 haven't asked my client whether they have prototypes  
02:22 2 from 20 years ago, because I've never been asked for  
02:22 3 it. But I will. I'll go ask.

02:22 4 And then they said identify each product  
02:22 5 we contend. We don't --

02:22 6 THE COURT: Mr. Shore, one second. My  
02:22 7 clerk tells me that it is on the chart of things to  
02:22 8 discuss. So why don't you take a quick look and see if  
02:22 9 you can find it?

02:22 10 MR. SHORE: I apologize. I didn't  
02:22 11 realize -- I guess I didn't realize it was prototypes  
02:22 12 by us -- or by Purdue. Because a prototype is  
02:22 13 something that you're doing to sell commercially.  
02:22 14 Apologies.

02:22 15 So but anyway, if there are any  
02:23 16 prototypes, or whatever you want to call it, from  
02:23 17 20 years ago and we can find them, we'll try to find  
02:23 18 them. But I wouldn't hold out any hope for that from  
02:23 19 20 years ago.

02:23 20 But otherwise we are not a commercial  
02:23 21 entity. We don't mark because we don't make anything.  
02:23 22 Every single -- and we listed and went to a great deal  
02:23 23 of trouble --

02:23 24 THE COURT: Hold on one second.

02:23 25 (Pause in proceedings.)

02:23 1 THE COURT: Mr. Shore, what I heard you  
02:23 2 say but you may not have meant to say, so I want to be  
02:23 3 clear, is that you're representing on behalf of your --  
02:23 4 the plaintiff here, that y'all haven't marked anything.  
02:23 5 Is that your position?

02:23 6 MR. SHORE: We don't make anything, so we  
02:24 7 don't mark anything.

02:24 8 THE COURT: So --

02:24 9 MR. SHORE: And my colleague has told me  
02:24 10 that we did ask and they did look for prototypes from  
02:24 11 the lab from 20 years ago, and there are none. So --

02:24 12 THE COURT: Okay. I got it.

02:24 13 Mr. Cohen, what is it -- I'm at a loss as  
02:24 14 to what it is you want, having heard that  
02:24 15 representation.

02:24 16 MR. COHEN: Just a supplemental response  
02:24 17 stating in response to Interrogatory No. 4, nothing has  
02:24 18 ever been made as far as they know.

02:24 19 THE COURT: Well, I think you just heard  
02:24 20 Mr. Shore say that.

02:24 21 MR. SHORE: That's not what I said at  
02:24 22 all. And that's not what the interrogatory requests.  
02:24 23 The interrogatory requests to identify each product  
02:24 24 that we contend has been made.

02:24 25 THE COURT: And I think you just told me

02:24 1 no products have been made. Prototypes maybe, but no  
02:24 2 product.

02:24 3 MR. SHORE: Right. Prototypes maybe, but  
02:24 4 no product. And we don't have any prototypes. And,  
02:24 5 again, they don't keep records for 20 years. They  
02:24 6 keep -- there's a five-year record retention policy,  
02:24 7 both at the university and the research foundation.

02:25 8 And we've asked Professor Cooper also  
02:25 9 about whether he has any prototypes remaining. And he  
02:25 10 doesn't. So this has been done. And we kind of went  
02:25 11 beyond the call of duty here. We not only gave them  
02:25 12 every single product that we've accused in this case,  
02:25 13 we gave them every single product we accused in  
02:25 14 companion litigation in North Carolina against  
02:25 15 Wolfspeed. So I don't know -- there's not anything  
02:25 16 else we can do.

02:25 17 THE COURT: Okay. Mr. Cohen, anything  
02:25 18 else?

02:25 19 MR. COHEN: Yes, Your Honor.

02:25 20 They have several license agreements  
02:25 21 with -- that have contemplated commercializing the  
02:25 22 claimed technology. It's unclear to us if those  
02:25 23 licensees had ever made a product according the claims.

02:25 24 So we believe we're entitled to an answer  
02:25 25 as to whether or not those people have. And if so,

02:25 1 what did Purdue do to ensure compliance with the  
02:25 2 marking statute?

02:25 3 THE COURT: Is that what your  
02:25 4 interrogatory asks? Is for the -- for licensees who  
02:25 5 have done marking?

02:25 6 MR. COHEN: Correct, Your Honor. For Rog  
02:25 7 No. 4, and then further for Rog No. 5 it asks for  
02:25 8 Purdue to explain how they've complied with the marking  
02:26 9 statute. And in our dispute chart we specifically  
02:26 10 identify the fact that there are several licensees that  
02:26 11 have had an obligation to commercialize these patented  
02:26 12 inventions.

02:26 13 MR. SHORE: That's not true. That's just  
02:26 14 not true. There have been no royalties paid to Purdue  
02:26 15 on these patents. There's one license agreement, I  
02:26 16 think, from 19 years ago that -- before silicon carbide  
02:26 17 even existed in the marketplace. It was with a company  
02:26 18 called Cree which is now called Wolfspeed.

02:26 19 They never commercialized the product.  
02:26 20 They never made a product. They licensed -- the  
02:26 21 patents expired before Cree ever came out with a  
02:26 22 silicon carbide product.

02:26 23 THE COURT: Mr. Shore, I'm not certain  
02:26 24 why, then, a response to their interrogatory would be  
02:26 25 "there are none."

02:26 1 MR. SHORE: Well, no. What we said in  
02:26 2 our answer was we do not currently contend that we --  
02:26 3 we don't make anything. And we're not aware of anyone  
02:26 4 else -- we're not aware of any past licensee that ever  
02:27 5 made anything.

02:27 6 THE COURT: Mr. Cohen, with that  
02:27 7 statement by the plaintiff, why are you concerned?

02:27 8 MR. COHEN: If that's the statement, we  
02:27 9 haven't heard, Your Honor. That if plaintiff is not  
02:27 10 aware of their licensees ever making a product  
02:27 11 according to the claims, that's the representation we  
02:27 12 were looking for.

02:27 13 THE COURT: That's what I heard Mr. Shore  
02:27 14 say, so I think we can move on to the next discovery  
02:27 15 issue.

02:27 16 MR. COHEN: Thank you, Your Honor.

02:27 17 So the next, we're talking about licenses  
02:27 18 and licensing revenue.

02:27 19 And I'm -- specifically Rog No. 10 asks  
02:27 20 for Purdue to identify licensing offers for the  
02:27 21 patents-in-suit. We're aware that --

02:27 22 THE COURT: I lost you there in the  
02:27 23 sense, when you say licensing offers, what direction  
02:27 24 are you going in?

02:27 25 MR. COHEN: For Purdue offering a license

02:27 1 to the patents-in-suit.

02:27 2 THE COURT: Okay. Got it.

02:27 3 MR. COHEN: So, again, we're aware of  
02:27 4 several license agreements that were actually, you  
02:28 5 know, executed.

02:28 6 We're also aware that Mr. Shore has told  
02:28 7 us they have an executed term sheet with the third  
02:28 8 party and also several licensing offers to the  
02:28 9 patents-in-suit that have been made recently. We  
02:28 10 believe we're entitled to a narrative answer that lists  
02:28 11 out those licensing offers for the patents-in-suit.

02:28 12 Similarly they've made offers to us. I  
02:28 13 believe they've made offers to Cree/Wolfspeed who's a  
02:28 14 defendant in North Carolina. But we believe we're  
02:28 15 entitled to an answer, as that could be relevant for  
02:28 16 damages. Particularly if they're going to be  
02:28 17 producing, you know, recently executed sort of  
02:28 18 litigation-driven license agreements.

02:28 19 MR. SHORE: I honestly don't know what  
02:28 20 he's talking about. We gave them -- there's no one at  
02:28 21 Purdue or the Purdue Research Foundation that  
02:28 22 negotiated any past licenses that he's talking about.  
02:28 23 We produced all the e-mails related to the  
02:28 24 negotiations. We produced the license agreements  
02:28 25 related to the negotiations. We produced everything



02:28 1 related to the negotiations for any license agreement  
02:28 2 that exists that we have. Everything.

02:29 3 And we can't -- we can't give a narrative  
02:29 4 response beyond the documents because no one is there  
02:29 5 now who was there at the time who did any of the  
02:29 6 negotiation. And we don't know who did it at the time,  
02:29 7 other than the people who signed the license  
02:29 8 agreements, which we have provided them.

02:29 9 So I have no idea what he wants.

02:29 10 Now, as far as him saying that he wants  
02:29 11 to get into and see our negotiations with an ongoing  
02:29 12 negotiation with a current defendant in another case,  
02:29 13 I've never even heard of that. That gets into -- that  
02:29 14 could get into all kind of mischief.

02:29 15 If we get a signed license agreement, I  
02:29 16 have no problem giving them the signed license  
02:29 17 agreement and the negotiations leading up to it. But  
02:29 18 to give them basically a window into our licensing  
02:29 19 negotiations with another third party before there's a  
02:29 20 license agreement so they can, what? Go and send  
02:29 21 subpoenas to them or something like that to interfere  
02:29 22 in the negotiation? That -- I've never even heard of  
02:30 23 that being allowed.

02:30 24 THE COURT: Response?

02:30 25 MR. COHEN: Your Honor, Mr. Shore's told

02:30 1 us there is an executed term sheet with a third party.  
02:30 2 That term sheet hasn't been produced, nor has there  
02:30 3 been a discussion or a disclosure of what those  
02:30 4 licensing offers were.

02:30 5 We're aware that there were additional  
02:30 6 licensing discussions pre-suit that to the extent  
02:30 7 Purdue or PRF is aware of what those offers were to  
02:30 8 license these patents-in-suit. We think we're entitled  
02:30 9 to a response.

02:30 10 But in terms of mischief, I'm not aware  
02:30 11 of how that would cause any mischief, Your Honor.  
02:30 12 Mr. Shore, I believe, has basically told us he's  
02:30 13 offered Cree similar licensing deals that he's offered  
02:30 14 ST in this case. So disclosure wouldn't really be much  
02:30 15 of a surprise.

02:30 16 It's just a matter that we believe that  
02:30 17 we're entitled to see the offers for license agreements  
02:30 18 to license these patents-in-suit past and present.

02:30 19 MR. SHORE: Here's the problem, Your  
02:31 20 Honor. We are deep in negotiations with the third  
02:31 21 party who we are not suing. There's a signed term  
02:31 22 sheet and we are exchanging drafts of a license  
02:31 23 agreement. If they were to get ahold of that  
02:31 24 information, there would be nothing to stop them from  
02:31 25 contacting or sending a subpoena to this third party

02:31 1 and trying to interfere in our ability to get the  
02:31 2 license done. Because that license is at a 3 percent  
02:31 3 royalty rate, and it would establish --

02:31 4 THE COURT: When do you anticipate the  
02:31 5 license being done?

02:31 6 MR. SHORE: It'll be done, I believe, by  
02:31 7 the end of July. Maybe sooner. But whenever it's  
02:31 8 done, we'll turn over everything. But the risk of  
02:31 9 them, you know, going in there and interfering with  
02:31 10 that to block that precedent from --

02:31 11 THE COURT: I got it. I got it. When  
02:31 12 the license is done, you'll produce it to them under  
02:31 13 the protective order.

02:31 14 MR. SHORE: Absolutely.

02:31 15 THE COURT: Mr. Cohen, what else is it  
02:31 16 that you wanted?

02:31 17 MR. COHEN: Yeah. So if we can move on  
02:31 18 to No. -- Rog No. 14 is to -- we're asking for license  
02:32 19 agreements. And in particular, what Mr. Shore has  
02:32 20 represented, is there was an old license agreement with  
02:32 21 Cree that I believe was at a substantially lower rate  
02:32 22 of .33 percent. That license agreement has not been  
02:32 23 produced.

02:32 24 We believe we're entitled to see Purdue  
02:32 25 and PRF's licenses for semiconductor technology more

02:32 1 broadly. In the dispute chart what Purdue has  
02:32 2 represented is that they don't believe those license  
02:32 3 agreements are technologically comparable which we  
02:32 4 believe is putting the cart before the horse. It  
02:32 5 should be that we see the license agreements, take a  
02:32 6 look at the patents and our experts can determine or  
02:32 7 possibly have a dispute later on whether or not they're  
02:32 8 technologically comparable.

02:32 9 We don't believe there's that many  
02:32 10 license agreements that this would be overly  
02:32 11 burdensome. There is no objection about technical  
02:32 12 comparability in their interrogatory responses. We  
02:32 13 believe that objection would be waived at this point  
02:32 14 because it wasn't made.

02:32 15 But again, Your Honor, I think it's  
02:32 16 really putting the cart before the horse. We'd like an  
02:33 17 identification and then a disclosure of all the license  
02:33 18 agreements for semiconductor technology broadly,  
02:33 19 starting with the old Cree agreements that Mr. Shore  
02:33 20 has represented did exist, or do exist.

02:33 21 MR. SHORE: First, the Cree agreement is  
02:33 22 19 years ago. It's not the same patents. It is a  
02:33 23 similar technology, but it's not the same technology  
02:33 24 and it's 19 years ago. We do not have a copy.

02:33 25 Cree, I believe, does have a copy.

02:33 1 Because as we were talking to Cree, they raised that  
02:33 2 up. So if they want to go get it from Cree, they can  
02:33 3 go get it from Cree. But we don't retain records from  
02:33 4 19 years ago --

02:33 5 THE COURT: I got it. I got it. You  
02:33 6 don't have it. I got it.

02:33 7 MR. SHORE: We don't have it.

02:33 8 As far as when he says semiconductor  
02:33 9 technology, that is incredibly broad. That is -- and I  
02:33 10 think Mr. Waite's declaration talks about that.  
02:33 11 There's semiconductive contact lenses.

02:33 12 So what we said is, this is a silicon  
02:33 13 carbide case. We will search for and produce every  
02:34 14 single silicon carbide MOSFET, IGBT, any type of  
02:34 15 silicon carbide power device. We will -- we will  
02:34 16 locate any of them that we can find we will produce  
02:34 17 them.

02:34 18 But to go back in non-computerized  
02:34 19 records and ask for anything related to a semiconductor  
02:34 20 across a campus where there's been 118,000 engineering  
02:34 21 graduates in the period of which they're asking for,  
02:34 22 that is way beyond overbroad. That is -- I mean, it  
02:34 23 would be like me saying, okay, well, you know, give me  
02:34 24 every single semiconductor document that ST has.  
02:34 25 That's the equivalent of what they're asking for.

02:34 1 But what we will -- what we have given  
02:34 2 them and what we will continue to search for and give  
02:34 3 them, if they need it, is anything related to silicon  
02:34 4 carbide power devices which is what this case is about.

02:34 5 And as far as waiving an objection, we  
02:34 6 objected to relevance. So if it's not technically  
02:35 7 incompatible, it's not relevant. And it's not  
02:35 8 relevant.

02:35 9 So anything related to silicon carbide  
02:35 10 power devices, we will give them, we will search for  
02:35 11 them, or we will let them know that we've exhausted all  
02:35 12 efforts, which we believe we have.

02:35 13 MR. COHEN: So if I may, Your Honor?

02:35 14 THE COURT: Sure.

02:35 15 MR. COHEN: Yeah. Starting with  
02:35 16 Interrogatory No. 4 asks Purdue to identify license  
02:35 17 agreements. The Cree agreement was not identified. So  
02:35 18 whether they have a copy or not is irrelevant. They  
02:35 19 knew that it existed and so they had an obligation to  
02:35 20 identify it and they didn't. And that's part of the  
02:35 21 problem.

02:35 22 The next problem is Purdue, you know,  
02:35 23 narrowing the scope of what they view as relevant  
02:35 24 technology, comparable technology, to what they view is  
02:35 25 silicon carbide, you know, powered semiconductor

02:35 1 technology.

02:35 2 We believe that discovery should enable  
02:35 3 us to look at the license agreements that they have for  
02:35 4 other semiconductor technologies and make our own  
02:35 5 determination if we believe it's technologically  
02:35 6 comparable.

02:35 7 Nothing in Mr. Waite's declaration and  
02:35 8 nothing Mr. Shore has told us says that it's overly  
02:36 9 burdensome for them to look at their license  
02:36 10 agreements. We're not talking about all documents for  
02:36 11 all semiconductor research. We're just talking about  
02:36 12 semiconductor technology license agreements. Produce  
02:36 13 them all and then we can have a discussion or dispute  
02:36 14 about technical comparability later.

02:36 15 MR. SHORE: Your Honor, again,  
02:36 16 Whack-A-Mole. In their dispute chart they say silicon  
02:36 17 carbide. And now he says any semiconductor. So again,  
02:36 18 it's way overbroad and it's not even -- it's not even  
02:36 19 what he has in his dispute chart.

02:36 20 Now he wants all semiconductor  
02:36 21 technology. You're talking about thousands of hours to  
02:36 22 go back and try to find this stuff. And it's not  
02:36 23 relevant.

02:36 24 And it's up to them to demonstrate  
02:36 25 relevance in their discovery request. And their own

02:36 1 chart says it's silicon carbide. It doesn't say all  
02:36 2 semiconductors.

02:36 3 MR. COHEN: Yes, Your Honor. We tried to  
02:36 4 narrow it to silicon carbide. It's clear that we need  
02:36 5 to go beyond simply silicon carbide. We need to see  
02:37 6 their license agreements.

02:37 7 I don't know how many that is. I don't  
02:37 8 believe it can be that many. Nor do I believe it could  
02:37 9 be that burdensome to review and produce license  
02:37 10 agreements for semiconductor technology.

02:37 11 MR. SHORE: And, again, to understand  
02:37 12 what semiconductive means, any material that is  
02:37 13 semiconductive. It doesn't mean a chip. It means any  
02:37 14 material that's semiconductive. It can be a material,  
02:37 15 some kind of material that's been invented.

02:37 16 So if we're going to do it at all, it  
02:37 17 should be limited to the technology at issue in the  
02:37 18 case which is silicon carbide powered semiconductors.  
02:37 19 And we're happy to do it. We've already done it.

02:37 20 THE COURT: Anything else?

02:37 21 MR. COHEN: Nothing from me, Your Honor.

02:37 22 (Pause in proceedings.)

02:39 23 THE COURT: Mr. Cohen, have you all -- by  
02:39 24 you all, I mean you and Mr. Shore -- had a discussion  
02:39 25 with respect to what you think what you together



02:39 1 believe the comparable licenses are that ST is going to  
02:40 2 produce?

02:40 3 MR. COHEN: No. Not yet, Your Honor.

02:40 4 THE COURT: Okay. Well, it seems to me  
02:40 5 that that's what ought to happen.

02:40 6 Whatever you want -- you know, maybe --  
02:40 7 I'm trying to think of some analogy that's not awful --  
02:40 8 but I'm thinking of a cage with, you know, small  
02:40 9 animals in it.

02:40 10 If you all, whatever -- as greedy as  
02:40 11 Mr. Shore wants to be and what he's expecting from you,  
02:40 12 he's going to know that he's going to be under the same  
02:40 13 obligation. However greedy you want to be from him,  
02:40 14 ST's going to be under the same obligation.

02:40 15 Why don't we start with that? And if  
02:40 16 that fails to resolve the argument, then come back to  
02:40 17 me and I'll get involved again.

02:40 18 Mr. Cohen, what is your next issue?

02:40 19 MR. COHEN: The final issue today, Your  
02:40 20 Honor, was Interrogatory No. 12, where we had asked for  
02:41 21 Purdue to describe their revenue from licensing  
02:41 22 semiconductor technology. Or we tried to narrow it to  
02:41 23 just silicon carbide technology.

02:41 24 So just in reference, Your Honor, to give  
02:41 25 you some context here, our expectation is that Purdue's

02:41 1 going to come to the Court and ask the jury for more  
02:41 2 money that Purdue and PRF have probably ever licensed  
02:41 3 any technology ever, and possibly more than their  
02:41 4 entire licensing program for the last few years.

02:41 5 We believe we are entitled to put that  
02:41 6 into some context. And, in particular, to show their  
02:41 7 licensing revenue for silicon carbide technology since  
02:41 8 the year 2000.

02:41 9 I mean, my understanding from Michael  
02:41 10 Shore is that that is minimal to none. And so if  
02:41 11 that's the case, we're entitled to see an answer that  
02:41 12 says that their licensing revenue from silicon carbide  
02:41 13 is minimal to none.

02:41 14 MR. SHORE: Wow. So I -- it's hard to  
02:41 15 even respond to that. So I can't imagine the Court  
02:42 16 admitting into evidence that they shouldn't be  
02:42 17 reasonably compensated -- somebody shouldn't be  
02:42 18 reasonably compensated for the invention before the  
02:42 19 Court because they didn't get money for other unrelated  
02:42 20 inventions in the past. That just is mind boggling.

02:42 21 But they're asking for everything back to  
02:42 22 2000. There wasn't even a commercially available sold  
02:42 23 silicon carbide power device until 2011. They're  
02:42 24 asking for information that goes back more than a  
02:42 25 decade before any device at issue in this case even

02:42 1 existed.

02:42 2 We are happy to give them any revenue --  
02:42 3 and we have -- given them a record of any revenue  
02:42 4 related to silicon carbide MOSFET technology. And the  
02:42 5 reason why there is no revenue -- or I don't believe  
02:42 6 there's any revenue or it's scant revenue -- is because  
02:42 7 that's why we're suing everybody who makes silicon  
02:42 8 carbide MOSFETs, because they're not paying royalties.

02:42 9 So, again, if they want -- I guess this  
02:42 10 is the goose and gander again. If they want to give  
02:42 11 us -- but I don't want it. I don't want all of their  
02:43 12 license agreements and all the royalties they've paid  
02:43 13 for the last 20 years on unrelated technology. I don't  
02:43 14 want that. Because it's not relevant. It'll never get  
02:43 15 into evidence. It has nothing to do with the case.

02:43 16 But silicon carbide power semiconductor  
02:43 17 technology is the technology here. To the extent that  
02:43 18 we have any licenses or obtained any licenses, we will  
02:43 19 absolutely give them an accounting of those licenses  
02:43 20 which we have.

02:43 21 And if there's any revenue that's been  
02:43 22 derived from those licenses, I don't know that the  
02:43 23 actual revenue matters as much as the royalty rate and  
02:43 24 the terms of the license. Because when you do a  
02:43 25 Georgia-Pacific analysis, it's not -- you don't look at

02:43 1 how much revenue was done. You look at what are the  
02:43 2 terms of the license.

02:43 3 And if the terms of the license for one  
02:43 4 company ends up being \$100,000 in revenue and the exact  
02:43 5 same terms for another company ends up being  
02:43 6 \$50 million in revenue, that doesn't matter. Because  
02:43 7 the license is executed and the terms of the license  
02:43 8 are what's key.

02:43 9 So, again, we'll give them anything  
02:44 10 related to silicon carbide power semiconductor  
02:44 11 technology. That's what we're -- that's what we will  
02:44 12 agree to only ask them for, their own license  
02:44 13 agreements or contracts or other things related to  
02:44 14 silicon carbide MOSFETs. That's all -- that's what the  
02:44 15 case is about.

02:44 16 And I don't have any idea -- I have no  
02:44 17 idea why they want to expand this to a universe that  
02:44 18 has nothing to do with the case, that will never get in  
02:44 19 front of the jury, that'll never be part of an expert  
02:44 20 report, because it's completely irrelevant.

02:44 21 THE COURT: Mr. Cohen?

02:44 22 MR. COHEN: Yes, Your Honor. I believe  
02:44 23 Purdue and PRF's model for licensing in the past is  
02:44 24 very relevant and is going to come up again and again.  
02:44 25 I see Mr. Shore doesn't want us to get into licensing

02:44 1 revenue and what people have actually paid.

02:44 2 But, again, I think we're entitled for  
02:44 3 this interrogatory as a response. It's limited to  
02:44 4 silicon carbide. But as Mr. Shore -- it appears to  
02:44 5 kind of keep shifting the definition of its silicon  
02:44 6 carbide power devices or silicon carbide power MOSFET  
02:45 7 devices.

02:45 8 We would like a response that identifies  
02:45 9 their licensing revenue, discrete from their total  
02:45 10 licensing revenue which is public, on what is silicon  
02:45 11 carbide technology. Or at least with an explanation of  
02:45 12 what Mr. Shore is going to limit that to, so that we  
02:45 13 have an answer on what it is they've licensed for this  
02:45 14 technology for these agreements related to silicon  
02:45 15 carbide.

02:45 16 MR. SHORE: Your Honor, silicon carbide  
02:45 17 is a element, or it's a compound. It appears in many  
02:45 18 hundreds, if not thousands, of things other than  
02:45 19 semiconductors. So what they're asking for is  
02:45 20 completely unrelated items, unrelated products,  
02:45 21 unrelated technologies that have not even anything to  
02:45 22 do with semiconductors. They want everything to do  
02:45 23 with silicon carbide. That's like asking for  
02:45 24 everything related to oxygen. It's ridiculous.

02:45 25 We will give them and have given them

02:45 1 everything related to the technology at issue. Silicon  
02:45 2 carbide power MOSFETs, silicon carbide IGBTs, silicon  
02:46 3 carbide -- any kind of FET, any kind of power device,  
02:46 4 anything related to power devices that are made of  
02:46 5 silicon carbide we're happy to give them. And that's  
02:46 6 all we're going to ask for from them because that's all  
02:46 7 that's relevant.

02:46 8 THE COURT: Anything else, Mr. Cohen?

02:46 9 MR. COHEN: No, Your Honor. Just that we  
02:46 10 would like, like I said, a narrative answer about their  
02:46 11 licensing revenue for silicon carbide power devices, if  
02:46 12 that's what Mr. Shore's willing to agree to.

02:46 13 THE COURT: Mr. Shore?

02:46 14 MR. SHORE: I tell you what, if they give  
02:46 15 me a narrative answer for all of my financial questions  
02:46 16 instead of referring me to documents, absolutely.  
02:46 17 Yeah. Let's do goose and gander on that too.

02:46 18 Because they haven't produced -- they  
02:46 19 produced nothing. And guess we'll be here in a couple  
02:46 20 weeks, we're still working out with them.

02:46 21 But if what he's saying is that any  
02:46 22 question about financial results, financial reporting,  
02:46 23 anything like that has to be in narrative response,  
02:46 24 okay. Let's do it for both sides.

02:46 25 THE COURT: Okay. I'll be back in a few

02:46 1 seconds.

02:46 2 (Pause in proceedings.)

02:54 3 THE COURT: Okay. Let's go back on the  
02:54 4 record.

02:54 5 So I'm going to give you all two options.  
02:54 6 As I said yesterday to a group -- well, at the end of  
02:54 7 the day yesterday I made them watch a Disney film at  
02:54 8 the end of the day that was a happy Disney film,  
02:54 9 because they were unhappy through the whole hearing,  
02:54 10 with each other.

02:55 11 But I'm going to give you two options.  
02:55 12 And I'm going to remain optimistic that you can do the  
02:55 13 first one, but if you can't, then...

02:55 14 The first option is after we're done here  
02:55 15 you go back to the drawing board and try and do mutual  
02:55 16 or bilateral parameters for what's going to be  
02:55 17 produced. Assuming that is not -- that you all can't  
02:55 18 do that -- and I say it's okay for you to do that,  
02:55 19 because the next one's going to take a lot more work.  
02:55 20 And I'm not requiring you to do the next one unless you  
02:55 21 can't go back and work things out.

02:55 22 What I am going to do is have you each go  
02:55 23 through, and whatever -- Mr. Shore, how many patents  
02:55 24 are being asserted?

02:55 25 MR. SHORE: Two, Your Honor.

02:55 1 THE COURT: Okay. And my law clerk, who  
02:55 2 was a patent examiner, tells me -- and I think I knew  
02:55 3 this before -- that each of those patents, as they're  
02:56 4 being prosecuted, would have been assigned to a certain  
02:56 5 technology group at the USPTO, correct?

02:56 6 MR. SHORE: Yes, sir.

02:56 7 THE COURT: So that if you all cannot  
02:56 8 come up with an agreement without doing this, then your  
02:56 9 homework will be that any license that you have,  
02:56 10 Mr. Shore, just because you're in my camera, that has  
02:56 11 any license that has patents in it that were prosecuted  
02:56 12 in the same section that the two patents you're  
02:56 13 asserting are in, if a license covers those, you turn  
02:56 14 that license over.

02:56 15 Same obviously for ST. If they have  
02:56 16 licenses that cover products of theirs that were  
02:56 17 prosecuted in the same section --

02:56 18 Actually, I guess there wouldn't be  
02:56 19 patents for that then, would there, Regan?

02:56 20 (Off-the-record discussion.)

02:56 21 THE COURT: Well, let me say, Mr. Shore,  
02:56 22 what is it that you would want back from ST? That's  
02:56 23 what I'm trying to figure out here.

02:57 24 MR. SHORE: The only thing that we think  
02:57 25 is relevant that we want is we want everything related,



02:57 1 any license agreements, any -- basically anything in  
02:57 2 the universe at ST that is related to silicon carbide  
02:57 3 MOSFETs or other FET power devices.

02:57 4 THE COURT: The problem with my solution  
02:57 5 is that they may have products that aren't covered by  
02:57 6 patents. And so that -- my solution might not work in  
02:57 7 that direction. It works in your direction because you  
02:57 8 know which sections those were. But I'm not sure what  
02:57 9 the solution is -- give me one more second. I'll be  
02:57 10 back.

02:58 11 (Pause in proceedings.)

03:00 12 THE COURT: Okay. We're going to start  
03:00 13 over.

03:00 14 And what I'm going to order is the  
03:00 15 production by both sides of any licenses that cover  
03:00 16 products that have power FETs, F-E-Ts, or silicon  
03:00 17 carbide transistors.

03:00 18 So after a long and arduous journey,  
03:00 19 that's where we're at.

03:00 20 Mr. Cohen, anything else?

03:00 21 MR. COHEN: Nothing from ST, Your Honor.  
03:00 22 Thank you very much.

03:01 23 THE COURT: Mr. Shore?

03:01 24 MR. SHORE: Nothing at this time, Your  
03:01 25 Honor.

03:01 1 THE COURT: Okay. Very good.

03:01 2 Thank you all, have a good afternoon. If  
03:01 3 you get a chance, go watch a happy Disney movie  
03:01 4 tonight. Or better yet, if you haven't seen Top Gun 2,  
03:01 5 go watch Top Gun -- or the new Top Gun.

03:01 6 So I hope to see some of you in person in  
03:01 7 the future. Take care.

03:01 8 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
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4 I, Kristie M. Davis, Official Court Reporter for the  
5 United States District Court, Western District of  
6 Texas, do certify that the foregoing is a correct  
7 transcript from the record of proceedings in the  
8 above-entitled matter.

9 I certify that the transcript fees and format comply  
10 with those prescribed by the Court and Judicial  
11 Conference of the United States.

12 Certified to by me this 30th day of June 2022.

13  
14 /s/ Kristie M. Davis  
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